



Montana Fish, Wildlife & Parks

MEMORANDUM

To: Matt Jaeger, Area Fisheries Biologist

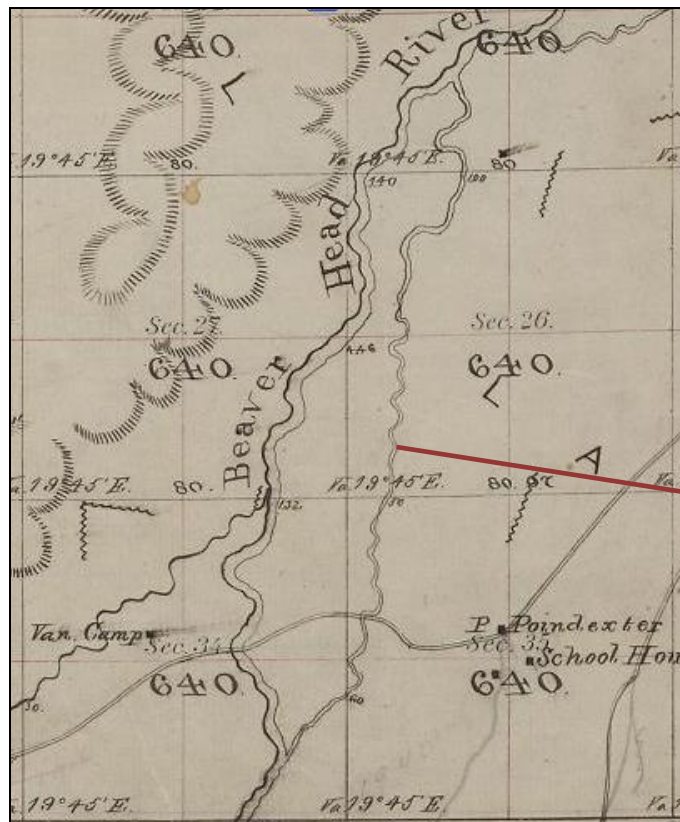
From: Andy Brummond, Water Resources Specialist

Date: October 27, 2010

Subject: Poindexter Slough

This memorandum is in response to your request for clarification of water management and water right issues involving Poindexter Slough.

Poindexter Slough is a channel of the Beaverhead River. The following excerpt from the General Land Office survey plat dating to 1870 shows clearly the water body known today as Poindexter Slough as a channel of the Beaverhead River. Over time the upstream portions of Poindexter Slough have been manipulated in order to regulate flows into Poindexter which supplies several irrigation diversions with the largest being the Dillon Canal. Most recently the connection to the main channel of the Beaverhead River was moved upstream in the early 1980s to its present location.



Poindexter Slough

In many key respects Poindexter Slough is akin to the Mitchell Slough which was subject of a Montana Supreme Court decision in 2008. Like Poindexter's relationship to the Beaverhead, the Mitchell was determined to be a natural channel connected to the Bitterroot River despite the fact that the upper reaches of the Mitchell in particular had been highly manipulated over time. It should be noted whether or not there were instream water rights for the Bitterroot River or the Mitchell Slough was never at issue. The Court found that the year-round diversion into the Mitchell Slough from the Bitterroot River provides more water than necessary to satisfy appropriate needs and this water was a public resource dedicated to the multiplicity of functions of the Mitchell including its function as a natural stream. Notwithstanding the significant manipulation of the channel and flow by man, Poindexter Slough is still a natural channel receiving water in large part from the Beaverhead River main channel just as the Mitchell Slough was found to be a natural channel supplied in part by diversion from the Bitterroot River.

Flows between channels of rivers are manipulated across Montana for varying reasons. For example the Supreme Court noted in the Mitchell Slough Decision that water was manipulated between the East Fork and West Fork channels of the Bitterroot River just upstream of the Mitchell Slough diversion. This manipulation of flow between channels is unto itself not an appropriation of water requiring a water right. Such is the case of providing more flow into Poindexter which is a channel of the Beaverhead River. It should also be noted the Clark Canyon Water Supply Company shares owned by Dillon Canal are delivered at their diversion on Poindexter and not at the headgate on the Beaverhead River main channel further supporting that Poindexter is a channel of the Beaverhead River.

FWP has instream water rights for the reach of the Beaverhead River. These water rights include a Statement of Claim and a Water Reservation both for 200 cfs. This water right applies to all channels of the Beaverhead River which would include Poindexter Slough. Also, FWP specifically recognized the high fishery value in Poindexter Slough, applying for and receiving a reservation for a 57.9 cfs base flow to specifically protect waters entering Poindexter whether from the main channel of the Beaverhead River or from other points along Poindexter. The upstream reach of the instream reservation is listed as beginning in the SW ¼ Section 3, TWP 8S, RGE 9W, the location to which the connection to the main channel of the Beaverhead River was moved in the early 1980s. The reservation for Poindexter clearly recognizes that water would be diverted from the main channel of the Beaverhead at the present location. While a water right is not necessary to divert water into the Poindexter Slough channel from the Beaverhead main channel, the existing instream flow water rights of FWP further support such action.

The bottom line is even though flows entering Poindexter from the main channel of the Beaverhead are now controlled, Poindexter is still a natural water body and channel of the Beaverhead River despite anthropogenic influences. Diversion of water from the Beaverhead main channel does not require a water right even though FWP's existing instream water rights do further support this activity. Increasing the capacity to divert water into the Poindexter Slough channel is not an expansion of a water right but is simply an effort to restore to some degree the natural function of Poindexter Slough as a channel of the Beaverhead River. However, care should be taken to make sure that increased flow in Poindexter does not cause property damage due to excessive flooding, excessive bank erosion or other mechanisms. Also, the ability of others to exercise their water rights from the reach of the Beaverhead bypassed by the Poindexter Slough channel should be preserved as well. Finally, appropriate stream permitting for the project is required as well.